In The

AUG 30 1974

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1974

No. 74-212

GEORGE HANZIMANOLIS,

Petitioner,

vs.

PATRICK V. MURPHY, as POLICE COMMISSIONER OF THE CITY OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT.

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No.

GEORGE HANZIMANOLIS,

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vs.

PATRICK V. MURPHY, as POLICE COMMISSIONER OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION JUDICIAL DEPARTMENT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New York, Appellate Division, First Judicial Department, entered on October 9, 1973, which unanimously affirmed the final order of dismissal of the Police Commissioner of the Police Department

of the City of New York, made November 9, 1972. Timely appeal was taken, as of right, on the grounds that substantial federal and state constitutional questions were involved, to the Court of Appeals of the State of New York, on November 1, 1973, said appeal having been dismissed by the Court of Appeals by order entered January 9, 1974 upon the ground that no substantial constitutional question was directly involved. Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York was timely made to the Supreme Court, Appellate Division, First Department, on February 5, 1974, which was denied by order entered March 14, 1974. Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York was timely made to the Court of Appeals on approximately April 4, 1974, which was denied by order entered June 5, 1974.

OPINION BELOW

There are no opinions in the within case.

Each of the Courts hereinbefore mentioned rendered judgment and decision without opinion and the orders of said Court are reproduced in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to the authority of 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Have petitioner's rights of due process of law and equal protection of laws under the United States Constitution been violated by the Police Department of the City of New York, at the departmental hearing, herein, by finding the petitioner guilty of "suspicion," that the petitioner was involved in the homicide of one Dr. Shapiro in view of the fact that the petitioner was not charged by the respondent as being involved in the homicide prior to the hearing?

2. Was petitioner's rights of the equal protection of laws and due process of law under the United States Constitution denied him by the respondent in finding him guilty of "suspicion" that the respondent was involved in a homicide since mere "suspicion" does not and cannot form the basis of an infraction, offense or crime?

3. Was the departmental hearing held by the respondent in such an atmosphere of confusion and suspicion so that the petitioner was denied a fair trial and therefore deprived of the equal protection of the laws and due process of law under the United States Constitution?

4. Was the punishment of dismissal from his employment rendered by the respondent against the petitioner, excessive, cruel and inhuman punishment since the infractions of the rules and procedures of the Police Department of the City of New York which the petitioner is alleged to have violated are of such a minor nature?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are:

Amendment XIV, Section 1;
Amendment VIII;
Amendment V.

STATEMENT OF THE CASE

The petitioner was employed as a patrolman by the Police Department of the City of New York for approximately 7 years, when on August 9, 1971, the petitioner was charged by the New York City Police Department with 5 alleged violations of the Rules and Procedures of the Police Department of the City of New York which was alleged to constitute conduct unbecoming a police officer.

On May 12, 1972, 9 months after the charges were made, the petitioner was suspended from all duties as police officer pending a departmental hearing.

The 5 alleged violations are exactly set forth in Appendix I.

A characterization of the charges, for the sake of brevity are as follows:

1. Working at another job on off-duty hours without permission of the Commissioner; 2. Registering his motor vehicle in New Jersey, although not a resident; 3. Knowingly

and wrongfully making false statements in a homicide investigation; 4. Cohabiting with a married female, not his wife; 5. Giving evasive answers during departmental interview.

A departmental hearing was held on June 21, 1972 and July 11, 1972 before the Deputy Commissioner of Trials for the Police Department of the City of New York.

On November 8, 1972, the Deputy Commissioner in charge of the hearing issued his findings, rationale and recommendation in the form of memorandum to the Police Commissioner, which is set forth in Appendix II.

Among other things, the petitioner was found guilty of Specifications 1, 2, 4 and 5, and not guilty of Specification 3 (knowingly and wrongfully making false statement during a homicide investigation).

On November 9, 1972, the Police Commissioner ordered the petitioner to be dismissed from his employment as police officer with the Police Department of the City of New York, following the recommendation of the hearing officer. The order of dismissal is set forth in Appendix III.

The petitioner, thereafter, timely commenced an Article 78 Proceeding in New York State Supreme Court, Special Term, New York County, to review the determination of the Police Commissioner, which was referred to New York State Supreme Court, Appellate Division, First Department, by order entered April 23, 1973. All of the federal Constitutional questions raised in the within petition for writ of certiorari were raised in that

proceeding in the petition, thereof (16a-17a, 24a-25a). The New York State Supreme Court, Appellate Division, First Department unanimously affirmed the Police Commissioner's order, without opinion (30a-31a), by order entered October 9, 1973.

Thereafter, timely appeal was taken as of right, to the New York State Court of Appeals, on the grounds that there were "questions directly involving the construction of the provisions of the Constitutions of the State of New York and of the United States" (32a-33a), which appeal was dismissed by the New York State Court of Appeals on the ground "that no substantial constitutional question is directly involved" (35a), by order entered on January 9, 1974. Thereafter, a motion for leave to appeal to the New York State Court of Appeals was timely made to the Supreme Court, Appellate Division, First Department on February 5, 1974, which was denied by order entered March 14, 1974 (36a-37a). Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York on approximately April 4, 1974, which was denied by order entered on June 5, 1974 (37a-38a), and thus petitioner's state remedies were exhausted.

REASONS FOR GRANTING WRIT

The within Court is respectfully requested to compare the charges (Appendix I) with the findings, rationale and recommendation of the Trial Commissioner (Appendix II).

It does not appear that the findings of the Commissioner belong as part of the same case with the charges. The following is a direct quote from the findings of the Trial Commissioner:

> "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro, but apparently there is no proof that he was responsible for his death."

Where, in the charges against the petitioner, was he notified that he would be tried for being "suspicious" with respect to the homicide of Dr. Shapiro? He was not charged or notified that he should defend himself with respect to Dr. Shapiro's death. Yet, the Trial Commissioner made a specific finding, which is quoted hereinbefore.

Because he was not notified and afforded the opportunity to defend against any involvement in the homicide, he was not afforded due process of law and the equal protection of the laws. It should be noted that no formal charges have ever been made against petitioner, with respect to Dr. Shapiro's death.

Further, by the Trial Commissioner's finding that the petitioner was "suspicious" of being involved in the homicide, the petitioner was again not afforded due process and equal protection of the laws.

Mere suspicion cannot form the basis of any infraction or violation. To be found guilty of mere "suspicion" and to be stripped of one's Civil Service employment as a result, as the petitioner was, is a desecration of due process of law, which cannot go unheeded.

In addition, by a comparison of the charges with the Trial Commissioner's findings, it is clear that the Trial Commissioner confused the death of Dr. Shapiro with the charges which were made against the petitioner. From his findings, it is apparent that the Trial Commissioner was far more concerned with the death of Dr. Shapiro than with the charges before him.

By confusing the suspicions concerning the petitioner, with the actual charges which were made, it is suggested that the departmental hearing was held in such an atmosphere of confusion and suspicion so that the petitioner was denied a fair hearing and thereby denied his constitutional rights of due process of equal protection of the laws.

It is further pointed out to the Court that the petitioner was found guilty of charges 1, 2, 4 and 5 which were relatively minor in nature. Although they were minor, the punishment was drastic. The petitioner was dismissed from his Civil Service position as Patrolman of the Police Department of the City of New York.

Such a drastic punishment for the relatively minor offenses, is a violation of the 8th Amendment of the United States Constitution in that the punishment was "cruel and unusual punishment."

The case at bar would have nationwide application in that this case is a prime example of how far the administrative agencies have eroded the due process rights of persons appearing

before them. The case at bar could serve as a preceden to all administrative agencies that their special status does no mean that they can eliminate due process requirements altogether.

It would also serve as a guide to administrative agencies that the punishment meted out by them must have some relation to the seriousness or the lack of seriousness to the charges before them.

CONCLUSION

The petitioner, having exhausted his state remedies, has been denied equal protection of the law and due process of law and has been inflicted with cruel and inhuman punishment; the circumstances thereof are of national significance and the requested writ of certiorari should be granted.

Respectfully submitted

s Samuel Lorenzo
Attorney for Petitioner

APPENDIX I

CHARGES AGAINST PETITIONER

The City of New York
POLICE DEPARTMENT

CHARGES AND SPECIFICATIONS		DATE August 9, 1971
Command	Serial No.	Diciplinary Records Unit Serial Number
1 D.C.O.	84	45339

TO THE POLICE COMMISSIONER:

I hereby charge Ptl. Hanzimanolis, George — 12732 — 26th Precinct with Violation of the Rules and Procedures

SPECIFICATIONS

in that:

1. Said Patrolman Hanzimanolis, did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service.

(R. & P. 2 47.0)

2. Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the state of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East

Keansburg, New Jersey, when at the time of this registration he was not a resident of said address.

(R. & P. 2 37.1; 27 3.1)

3. Said Patrolman Hanzimanolis, did knowingly and wrongfully, and without just cause, make false statements, on September 24, 1970, during an official homicide investigation being conducted by the New York State Police.

(R. & P. 2 37.1; 27 3.1)

4. Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970, at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife.

(R. & P. 2 37.1; 27 3.1)

5. Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. and Mrs. L. Lewis, using license plate #SRX 741; if he had never registered at said motel or any motel in the vicinity of said motel, using the name L. Lewis; if between the period of January 19th and September 21st 1970, if he had registered at

said motel using the name L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall".

(R. & P. 2 37.1; 27 3.1)

COMPLAINANT:

s Lt. Casper Bonello
Lieutenant Casper Bonello
Internal Affairs Division.
First Deputy Commissioner's
Office.

s George Morse
Captain George Morse
Internal Affairs Division.
First Deputy Commissioner's
Office.

WITNESSES:

Sgt. Charles Palmer, Sh#981, I.A.D., 1 D.C.O. (Day cuty)
Sgt. Raymond Manners, Sh#2145, 26th Sqd.
Lt. Robert Flynn, New York State Police.
Inv. Frank Conover, New York State Police.
Assunata Guazzo, 19 Harbor Way, East Keanesburg, N.J.

Charges Against Petitioner

VACATIONS:

Lt. Casper Bonello — 11 22 to 12 3 71.
Sgt. Charles Palmer — 8 16 to 9 7 71.
Sgt. Raymond Manners — 8 9 to 8 20 71.
Ptl. George Hanzimanolis — Completed.

CHARGES AND SPECIFICATIONS
with
NOTICE OF TRIAL

In Re Complaint vs. Ptl. Hanzimanolis, George — 12732 — 26th Precinct

1st ENDORSEMENT

C.O., I.A.D., 1 D.C.O. to the Police Commissioner, August 9, 1971. I have investigated the within charges and recommend: Trial

s Joseph J. Collins
Joseph J. Collins
Deputy Chief Inspector

3rd ENDORSEMENT

NOTICE OF TRIAL

New York, Sept. 10, 1971

Charges Against Petitioner

TAKE NOTICE that charges have been preferred against you by the Police Department of the City of New York, and that these charges with specifications thereof are as herein set forth.

A public trial will be held and charges examined nto by and before the Police Commissioner or a Deputy Comm ssioner of Manhattan, City of New York, 400 Broom St. Rm. 812, at 1.000 hrs. am pm, on Sept. 27, 1971, and will be continued as ordered until concluded.

You are directed to answer these charges in accordarce with the Rules and Procedures, at the time, date and place designated above.

BY DIRECTION OF THE POLICE COMMISSIONER

LOUIS L. STUTMAN
Chief Clerk

APPENDIX II

MEMORANDUM

THE CITY OF NEW YORK
POLICE DEPARTMENT
NEW YORK, N.Y. 10013

MEMORANDUM TO: POLICE COMMISSIONER

Re:
Patrolman George Hanzimanolis,
Shield No. 12732, 26th Precinct
Disciplinary Records Case No. 45339

The respondent is charged with the following Specifications:

1. Said Patrolman Hanzimanolis, did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service.

(R & P 2 47.0)

2. Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the state of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East Keanesburg, New Jersey when at the time of this registration he was not a resident of said address.

(R & P 2/37.1; 27/3.1)

Memorandum

3. Said Patrolman Hanzimanolis, did knowingly and wrongfully, and without just cause, make false statements on September 24, 1970, during an official homicide investigation being conducted by the New York State Police.

(R & P 2 37.1; 27 3.1)

4. Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970 at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife.

(R & P 2 37.1; 27 3.1)

5. Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. & Mrs. L. Lewis, using license plate No. SRX 741; if he had ever registered at said motel or any motel in the vicinity of said motel, using the name of L. Lewis; if between the period of January 19th and September 21st, 1970, if he had registered at said motel using the name L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall".

(R & P 2 37.1; 27 3.1)

Memorandum

A trial was completed before me on July 11, 1972.

On September 21, 1970, Dr. Sidney Shapiro was found dead in his automobile in Westchester County apparently the victim of a homicide by gunshot. Anonymous telephone calls to law enforcement agencies alleged that a new York City patrolman was friendly with a doctor's wife and that the patrolman had hired someone to kill Dr. Shapiro. The respondent was identified as the above patrolman. He is legally separated from his wife.

On September 24, 1970 the respondent in the presence of investigators of this department told representatives of the New York State Police that he had been having an affair with Mrs. Nina Shapiro at the time of the death of her husband. He further stated that on the date of the homicide he had gone to a motel with Mrs. Shapiro and registered under the name of Mr. and Mrs. L. Lewis at Parkway Motel. They had gone to motels on other occasions.

On June 8th and June 17th, 1971 the respondent was questioned by representatives of the Internal Affairs Division of this department. He then said that the statement he made to the New York State police was false. He was specifically asked if he had registered at a motel on September 21, 1970 under the name of Mr. and Mrs. L. Lewis and he denied it. The respondent was asked whether he had registered on 27 different dates between January 19, 1970 and September 29, 1970 mostly at the Parkway Motel in Elmsford, New York using the name Mr. and Mrs. L. Lewis. The respondent's reply was "I don't recall."

Memorandum

The Department produced a handwriting expert who examined the motel registration cards and department records which contained respondent's signature and handwriting. It was his opinion that the respondent signed the cards. Where block letters were used, the expert testified that the respondent made them. Respondent did not offer any proof to show that the cards were not in his handwriting.

The respondent conceded that he had made a statement to the New York State Police that he had been at a motel with Mrs. Shapiro on September 21, 1971 the day of the homicide but contends that statement was made under pressure.

The respondent was separated from his wife for three years prior to the date of these specifications which are dated August 16, 1971.

During the course of this investigation, it was also disclosed that the respondent had a newspaper delivery service and had not obtained permission from the Police Commissioner to engage in this employment. It was also disclosed that he had registered a motor vehicle in the State of New Jersey when actually he was not a resident of that state.

FINDINGS

I find that the statements of the respondent that he could not recall whether he had registered at a motel with Mrs. Shapiro on 27 occasions were evasive and false.

Memorandum

I find that his original statement to the State Police that he had cohabited with Mrs. Shapiro on September 21, 1970 was true.

The respondent was married at the time that he had relations with a married woman on numerous occasions.

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death.

I find the respondent NOT GUILTY of Specification No. 3, and GUILTY of Specifications Nos. 1, 2, 4 and 5.

The respondent has 7 years of service in the department without any prior record.

RECOMMENDATION

I recommend that the respondent be DISMISSED from the Police Service of the City of New York.

s/ Louis L. Stutman
Louis L. Stutman,
Deputy Commissioner
In Charge of Trials

LLS:jbh

APPENDIX III

FINAL ORDER OF DISMISSAL

THE CITY OF NEW YORK
POLICE DEPARTMENT
NEW YORK, N.Y. 10013

November 9, 1972

In the Matter of the Disciplinary Proceedings

-against- FINAL ORDER
OF DISMISSAL

Ptl. George Hanzimanolis
Shield No. 12732, 26th Pct.

Ptl. George Hanzimanolis, Shield No. 12732, 26th Precinct, having been duly served with written notice, has been tried on written charges and specifications numbered 45339 as set forth on form P.D. 468-121 dated August 9, 1971 and after a review of the entire record, has been found guilty of specifications one, two, four and five and not guilty of specification three. Now, therefore, pursuant to the powers vested in me by Section 434a-14.0 of the Administrative Code of the City of New York, I hereby dismiss Patrolman George Hanzimanolis from the Police Service of the City of New York.

s/ Patrick v. Murphy
PATRICK V. MURPHY
POLICE COMMISSIONER

APPENDIX IV

PETITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

GEORGE HANZIMANOLIS,

Petitioner,

-against-

PATRICK V. MURPHY, as Police Commissioner of the Police Department of the City of New York,

Respondent.

To the Supreme Court of the State of New York, County of New York:

The Petitioner, GEORGE HANZIMANOLIS, respectfully alleges:

1. Petitioner resides at 190 Wadsworth Avenue, Borough of Manhattan, City and State of New York.

2. I was employed as a Patrolman by the Police Department of New York for a period of approximately seven years prior to my suspension herein. My Shield No. was 12732, and I was attached to the 26th Precinct in Manhattan.

Petition

3. On August 9, 1971, I was charged by the New York City Police Department with five violations of the Rules and Procedures of the Police Department of the City of New York. The exact charges are set forth in EXHIBIT 1 and annexed hereto.

4. On May 12, 1972, I was suspended from all duties as a Patrolman, without pay, pending a Departmental Hearing of the charges.

5. On June 21, 1972 and July 11, 1972, a Departmental Hearing was held before the Hon. LOUIS L. STUTMAN, Deputy Commissioner of Trials for the Police Department of the City of New York.

6. On November 8, 1972, Deputy Commissioner STUTMAN issued his Findings, Rationale, and Recommendation in the for of a Memorandum to the Police Commissioner. Said Memorandum, including the Findings, Rationale, and Recommendation are annexed hereto and marked EXHIBIT 2.

7. In the aforementioned Findings, the Deputy Commissioner found me guilty of Specifications 1, 2, 4 and 5, and not guilty of Specification 3.

8. On November 9, 1972, the Hon. PATRICK V. MURPHY, Police Commissioner, issued a Final Order of Dismissal, permanently dismissing me. In doing so, he found me guilty of Specifications 1, 2, 4, and 5, and not guilty of

Specification 3. Said Final Order of Dismissal is annexed hereto and marked EXHIBIT 3.

9. The exact charges are set forth in EXHIBIT 1. But for the purposes of brevity in this portion of the Petition, I shall characterize them as follows: (I shall not deal with Specification 3 since I was found not guilty and that Specification is not an issue in this matter.)

> Specification 1 - Moonlighting without authorization from the Commissioner by owning and operating a newspaper delivery service.
>
> Specification 2 - Registering my motor vehicle in New Jersey although not a resident.
>
> Specification 4 - Cohabiting with one Nina Shapiro, a married female, not my wife.
>
> Specification 5 - Knowingly giving evasive answers during an official Departmental Interview on June 17, 1971, about registrations at a motel between January 19, and September 21, 1970, a period of approximately one to one and a half years prior.

10. I now quote from the Memorandum of Deputy Commissioner STUTMAN, in which he gave his Findings, Rationale and Recommendations:

"A trial was completed before me on July 11, 1972.

On September 21, 1970, Dr. Sidney Shapiro was found dead in his automobile in Westchester County apparently the victim of a homicide by gunshot. Anonymous telephone calls to law enforcement agencies alleged that a New York City patrolman was friendly with a doctor's wife and that the patrolman had hired someone to kill Dr. Shapiro. The respondent was identified as the above patrolman. He is legally separated from his wife . . . .

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death."

It is quite obvious from the aforementioned quotations and from the fact that Deputy Commissioner STUTMAN spends 2½ pages of his 3 page decision going into the question of Dr. Sidney Shapiro's death, that I was not tried and dismissed because of the four Specifications hereinbefore mentioned. The basis of my dismissal was Deputy Commissioner STUTMAN's "suspicions."

Nothing in the four Specifications even relates to a charge that I was involved in Dr. Shapiro's death. I was found to be "suspicious" and therefore guilty of something I was not charged with.

I was, in effect, tried for some nebulous "suspicions" which were not set forth in the Specifications. I was tried Ex Parte for those suspicions. Gossip was used as evidence. The final decision of those proceedings had to be couched in some minor violations of the Rules and Proceedings of the Police Department because they could not be sustained by Due Process.

The reason I say I was tried Ex Parte is because the Departmental Hearing Record is void of any connection between the death of Dr. Shapiro and myself. There is a vague reference by a State Police Officer that at the time of his death, I was a "possible suspect." At that time and even now everybody connected with Dr. Shapiro and his family and practice was a "possible suspect", including his brothers-in-law and patients.

I state here, under oath, and without privilege, that I was in no way connected with or guilty of the death of Dr. Sidney Shapiro.

There is no way that I could defend against phantom "suspicions" and gossip.

To allow suspicions and gossip to be the basis of my dismissal from the Police Department is a complete deprivation of Due Process of Law, guaranteed by the New York State and United States Constitutions.

So is it a violation of Due Process of Law to be found guilty of being "suspicious" of a possible homicide and be punished for it.

It is also a deprivation of Due Process to be found to be guilty of being suspicious without being first advised that that was what I was being tried for. I respectfully request the Court to compare the Specifications of the charges (EXHIBIT 1) with Deputy Commissioner STUTMAN's Findings, Rationale, and Recommendations (EXHIBIT 2). They do not appear to belong to the same case.

11. I further point out that the Departmental Hearing was held in an atmosphere of suspicions and hidden charges concerning Dr. Shapiro's death. Because of that I could not possibly get a fair hearing concerning these four Specifications that I was found guilty of.

It is apparent from the words of the Trial Commissioner STUTMAN's Memorandum (EXHIBIT 2) that in his own mind he was confusing the two and could not separtae them and thereby render a fair decision. For this reason, in itself, I respectfully suggest that the within Motion be granted.

12. Before going into the merits of the four Specifications that I was found guilty of, let me point out that whether they are taken individually or together they amount to very minor infractions of the Rules and Procedures. The usual punishment meted out for these violations, even if I was guilty, would be a loss of vacation pay for approximately two or three days for each Specification.

Petition

13. With reference to Specification 1, which is as follows:

> "Said Patrolman Hanzimanolis, did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service." (R. & P. 2/47.0)

The Temporary Operating Procedures and Rules and Procedures which were in effect in February of 1970, the time mentioned in the Specifications, required every Police Officer to obtain written authorization from the Commissioner to allow the individual to be employed by someone other than the Police Department. The aforementioned Rules and Procedures and Temporary Operating Procedures did not require such authorization for any Police Officer with reference to ownership and operation for himself of commercial property. The aforementioned Rules and Procedures and Temporary Operating Procedures were completely silent on the question of any Police Officer owning or operating commercial property.

In his supporting affirmation my attorney, SAMUEL LORENZO, Esq., calls upon the Respondent to produce the text of any Rule or Procedure of the Police Department which requires authorization by the Police Commissioner for any Police Officer to own or operate commercial property on his own behalf.

Petition

I owned and operated a small newspaper delivery service. I was not employed by any newspaper or anyone else. I owned it and operated it and was not answerable to any employer. I engaged delivery boys to deliver the newspapers. I was the owner of this commercial property outright.

Just prior to my owning the newspaper delivery service, I was employed as a taxi driver for which I had duly applied for and received authorization from the Commissioner to engage in such employment. I did not apply for authorization for the newspaper service, since no authorization was necessary.

14. With reference to Specification 2, which is as follows:

> "Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the state of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East Keanesburg, New Jersey, when at the time of this registration he was not a resident of said address." (R. & P. 2/37.1; 27/3.1)

In mitigation of this charge I point out that when I registered my vehicle in New Jersey I had intended to lease a house at 19 Harbor Way, East Keanesburg, New Jersey for the summer. I had in fact made arrangements with a fellow Police Officer who had that location in New Jersey for that Police Officer to use my apartment in New York and I in turn would use his place in Keanesburg for my summer vacation and time off. The exchange never came about since the fellow Police Officer changed his mind.

I would further point out on August 16, 1971, I was further charged by the Police Department, in separate charges and Specifications attached hereto and marked EXHIBIT 4, for parking my vehicle with New Jersey license plates near the Precinct and for commuting to work in a vehicle bearing New Jersey registration. I was found guilty of this Specification and was fined the loss of two (2) days vacation. A copy of the decision is annexed hereto and marked EXHIBIT 5.

An examination of EXHIBIT 4 indicates that the charges at that time were very similar to the charge in Specification 2 herein arising out of the same set of circumstances as Specification 2 herein. As stated, I was found guilty of those charges and was penalized two days vacation.

My attorney advises me that by bringing a similar charge again in Specification 2 herein that this constitutes Double Jeopardy.

Aside from the question of Double Jeopardy, I was only fined two days vacation (EXHIBIT 5), and the same charge in the matter herein now supposedly constitutes a partial basis for my dismissal.

I quote from Specification 2 of the August 16, 1971 charges (EXHIBIT 4):

> " . . . did fail to obey the provisions of a memo issued by the C.O. 26th Pct., on January 7, 1971, which directed that members of the 26th

> Pct. not commute to work in vehicles bearing New Jersey registration plates, since this could bring discredit upon this department." (R. & P. 2 2.0)

Apparently, the practice of Police Officers registering vehicles in New Jersey is so wide spread that the C.O. of the 26th Precinct had to issue a Memo on the subject directed to all the members of the 26th Precinct. It is further apparent from the same quotation that it is such a minor infraction that the C.O., in his directive, did not ask the Police Officers to cease and desist from such registration but merely not to commute to work in the vehicle since it could bring discredit upon this department.

It is on this type of charge that the Police Department sought my dismissal.

15. As to Specification 4, which is as follows:

> "Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970, at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife." (R. & P. 2/37.1; 27/3.1)

In defense of myself on this Specification, I must ask the Court to look at the Record of the Departmental Hearing. There is not a scintilla of credible evidence as to whom, if anyone, was

with me on that date. The evidence, at best is hearsay, twice removed. My attorney advises me that the legal definition of cohabit is "living, or abiding or residing together as man and wife." At worse, the charge and evidence would indicate that I had registered in a motel on that date and might have been joined there by some unnamed woman. A single registration in a motel does not constitute cohabitation.

I point out to the Court, on September 21, 1970, the date mentioned in the Specification, I was completely separated from my wife for more than two years pursuant to a signed Separation Agreement, which Agreement was filed with the County Clerk, Bronx County.

My attorney shall have more to say on the legal questions involved in his supporting affirmation.

16. As to Specification 5, which is as follows:

> "Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. and Mrs. L. Lewis, using license plate #SRX 741; if he had ever registered at said motel or any motel in the vicinity of said motel, using the name L. Lewis; if between the period of January 19th and

September 21st, 1970, if he had registered at said motel using the name L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall". (R. & P. 2 37.1; 27 3.1)

The Hearing Commissioner characterized the aforementioned answers as evasive. I point out to the Court that on June 8, and June 17, 1971, I was interviewed by the Department of Internal Affairs, and I was asked and I answered more than 140 questions. I suggest that it is an indication of my veracity at that time that only three of those questions can be considered ambiguous enough to be considered possibly evasive.

I was asked questions concerning events which took place approximately one to one and a half years previously, and I had no records upon which to base my answers. I did not deny the events which I was questioned about. I was merely uncertain and under a great deal of pressure. I did not answer affirmatively because of the uncertainty of the dates and places.

At any rate, the charge is of such a minor and ambiguous character that it can hardly serve to constitute a basis for dismissal.

17. Petitioner states that no previous application has been made to this or any other Court for the relief requested herein.

18. I respectfully suggest to the Court that the within Motion be granted in all respects for the following reasons:

Petition

a) Although I had been brought to trial at a Departmental Hearing of five specific charges, I was in fact found guilty of other charges and "suspicions" not related or mentioned in the original Specifications.

b) I was denied Due Process of Law pursuant to the New York State Constitution and the United States Constitution in that I was not afforded an oppurtunity to defend against the charges and "suspicions" which I was in fact found guilty of.

c) My dismissal because "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death." is further contrary to Due Process of Law because mere suspicion cannot formulate the basis of dismissal.

d) The Departmental Hearing was held in an atmosphere of confusion and suspicion, as evidenced by the Trial Commissioner's Memorandum, that the Respondent was denied a fair trial and was punished excessively because of it.

e) That there is insufficient competent evidence to support the Findings of Petitioner's guilt as to Specifications 1, 4, and 5, and that Specification 2 is of such a minor nature that it will not support Petitioner's dismissal from the Police Department.

f) That even if Petitioner was guilty of Specifications 1, 2, 4, and 5, as found by the Police Commissioner, the dismissal of the Petitioner from the Police Department as a result of said

Findings would be excessive, cruel and inhuman punishment since the infractions are of such a minor nature.

WHEREFORE, it is respectfully requested that the within Motion be granted in all respects and that an Order be entered as follows:

a) To review and annul the Final Order of Dismissal, dated November 9, 1972, dismissing the Petitioner from the Police Department of the City of New York.

b) Reinstating the Petitioner as Patrolman to the Police Service of the City of New York as of May 12, 1972, the date of his suspension, with full back pay and all privileges and benefits restored as of that date.

c) For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York

January 30, 1973

GEORGE HANZIMANOLIS (Petitioner)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GEORGE HANZIMANOLIS, being duly sworn, deposes and says that I am the Petitioner in the within action, that I have read the foregoing Petition and know the contents thereof; that

the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters, I believe it to be true.

GEORGE HANZIMANOLIS (Petitioner)

Sworn to before me, this
30th day of January, 1973

APPENDIX V

VERIFIED ANSWER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

GEORGE HANZIMANOLIS,

Petitioner

-against-

PATRICK V. MURPHY, as Police Commissioner of the Police Department of the City of New York,

Respondent.

TO THE SUPREME COURT OF THE
STATE OF NEW YORK

Verified Answer

Respondent, by his attorney, NORMAN REDLICH, Corporation Counsel, answering the petition herein:

1. Denies each and every allegation in paragraph "9" of the petition and respectfully refers this Court to petitioner's Exhibit 1 for the full text and meaning thereof.

2. Denies each and every allegation in paragraph "10" of the petition and respectfully refer this Court to petitioner's Exhibit "2" for the full text and meaning thereof.

3. Denies each and every allegation in paragraph "11", "12", "13", "14", "15", "16" and "18a", "18b", "18c", "18d", "18e" and "18f".

AS AND FOR A FIRST AFFIRMATIVE AND COMPLETE DEFENSE, RESPONDENT ALLEGES THAT:

5. Petitioner has failed to state facts sufficient to warrant the relief requested.

AS AND FOR A SECOND AFFIRMATIVE AND COMPLETE DEFENSE, RESPONDENT ALLEGES THAT:

6. Petitioner was duly served with the charges and specifications against on or about August 9, 1971. (A copy of the charges and specifications are marked as petitioner's Exhibit 1).

7. A hearing was held on the charges and specifications before the Hon. Louis L. Stutman, Deputy Commissioner. (A

copy of the transcript of the hearing and hearing Exhibits are attached and marked respondent's Exhibit A.)

8. At the hearing, the petitioner was afforded all the rights and privileges which constitute due process of the law.

9. After the hearing, the Hearing Officer found petitioner guilty of specifications "1", "2", "4" and "5" and recommended that the petitioner be dismissed from the Police Service of the City of New York. (A copy of the Hearing Officer's Findings and Recommendation is marked Petitioner's Exhibit 2.)

10. Respondent Police Commissioner after a review of the entire record, found petitioner guilty of Specifications "1", "2", "4", and "5" and dismissed petitioner from the Police Service of the City of New York. (A copy of the Final Order of Dismissal is marked Petitioner's Exhibit 3.)

11. The disposition of the charges against the petitioner was in all ways legal and proper and supported by substantial evidence.

12. The penalty imposed was not disproportionate to the offense or an abuse of discretion.

WHEREFORE, respondent prays for a judgment denying the application and dismissing the petition.

Verified Anwer

NORMAN REDLICH
Corporation Counsel
Attorney for Respondent
Office & P.O. Address
Municipal Building
New York, New York
Tele. No. 566-2188
566-2192

STATE OF NEW YORK) SS:
COUNTY OF NEW YORK)

LOUIS M. NECO, being duly sworn, deposes and says that he is the Deputy Commissioner of the New York City Department in charge of Legal Matters; that the reason why this verification is not made by the respondent is that your deponent has been duly designated by the Police Commissioner of the New York City Police Department pursuant to §1101, subd. c of the New York City Charter to act on said Commissioner's behalf for the purpose of verifying the pleading herein; that he has read the foregoing Answer and knows the contents thereof to be true except as to matters therein alleged upon information and belief and as to those matters, he believes them to be true; that the source of his information and the basis for his belief are the books and records of the Police Department.

Sworn to before me this
day of 1972.

LOUIS M. NECO

APPENDIX VI

ORDER DATED OCTOBER 9, 1973

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 9, 1973.

Present - Hon.

Harold A. Stevens, Presiding Justice
Emilio Nunez
Theodore R. Kupferman
Francis T. Murphy, Jr.
Myles J. Lane, Justices.

In the Matter of the Application of George Hanzimanolis,

Petitioner,

-against- 7459

Patrick V. Murphy, as Police Commissioner of the Police Department of the City of New York,

Respondent.

The above-named petitioner having moved at Special Term of the Supreme Court, New York County, pursuant to Article 78 of the Civil Practice Law and Rules, for a review by the court of a determination of the respondent dated November 9, 1972, dismissing petitioner from the police department of the City of New York,

Order Dated October 9, 1973

And this proceeding having been transferred by order of said court, entered on April 23, 1973, to this Court for review and determination.

And said proceeding having duly come on to be heard before this Court and having been argued by Mr. Samuel Lorenzo, of counsel for the petitioner, and by Mr. Jesse J. Fine, of counsel for the respondent; and due deliberation having been had thereon,

It is unanimously ordered that the determination of the respondent be and the same hereby is confirmed, without costs and without disbursements.

ENTER:

HYMAN W. GAMSO

Clerk.

APPENDIX VII

NOTICE OF APPEAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

GEORGE HANZIMANOLIS,

Petitioner-Appellant,

for an order under Article 78
of the C.P.L.R.

-against- Index #2386/73

PATRICK V. MURPHY, as Police Commissioner of the Police Department of the City of New York,

Respondent-Respondent.

S I R S:

PLEASE TAKE NOTICE that the Petitioner above named, relying upon the questions directly involving the construction of the provisions of the Constitutions of the State of New York and of the United States hereby appeals as of right to the Court of Appeals of the State of New York from an order of the Appellate Division of the Supreme Court, First Department,

entered in the Office of the Clerk of said Appellate Division on the 9th day of October, 1973 which unanimously affirmed an order of the Police Commissioner of the City of New York, dismissing Petitioner from his position as Patrolman with THE NEW YORK CITY POLICE DEPARTMENT, the review of which order was referred from the Supreme Court of the State of New York, New York County, to the Appellate Division, First Department, by an order entered on April 23, 1973, in the Office of the Clerk, New York County, and Petitioner appeals from each and every part of the said order of the Appellate Division as well as from the whole thereof.

Dated:

New York, New York
November 1, 1973

Yours, etc.

SAMUEL LORENZO and
HAROLD B. FONER, Esqs.
Attorneys for Petitioner-
Appellant
401 Broadway
New York, New York 10013

Notice of Appeal

To:

CLERK, COUNTY OF NEW YORK

NORMAN C. REDLICH, Esq.
Attorney for Respondent-Respondent
Municipal Building
New York, New York 10007

APPENDIX VIII

ORDER DATED JANUARY 9, 1974

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the ninth day of January A.D. 1974.

Present, Hon. CHARLES D. BREITEL, Chief Judge, presiding.

I Mo. #971 73

In the Matter of the Application of George Hanzimanolis, for an order pursuant to Art. 78 &c.,

Appellant,

Order Dated January 9, 1974

vs.

Patrick V. Murphy, as Police Commissioner &c.,

Respondent.

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved.

A copy

s/ James M. Flavin
Clerk

APPENDIX IX

ORDER DATED MARCH 14, 1974

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 14, 1974.

Present - Hon.

Emilio Nunez, Justice Presiding,
Theodore R. Kupferman,
Francis T. Murphy, Jr.,
Myles J. Lane, Justices.

In the Matter of the Application of
George Hanzimanolis,

Petitioner,

for an order under Article 78 of the C.P.L.R.

-against- M-265

Patrick V. Murphy, as Police Commissioner of the Police Department of the City of New York,

Respondent.

The above named petitioner having moved for leave to appeal to the Court of Appeals from the order of this Court entered on October 9, 1973,

Order Dated March 14, 1974

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavits of Samuel Lorenzo in support of said motion, and the affidavit of Jesse J. Fine in opposition thereto, and after hearing Mr. Samuel Lorenzo for the motion, and Mr. Jesse J. Fine opposed,

It is ordered that said motion be and the same is hereby denied with $20 costs.

ENTER:

Hyman W. Gamso
Clerk.

APPENDIX X

ORDER DATED JUNE 5, 1974

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the fifth day of June A.D. 1974.

Present, Hon. CHARLES D. BREITEL, Chief Judge, presiding.

Order Dated June 5, 1974

Mo. No. 317

In the Matter of the Application of George Hanzimanolis,

Appellant,

vs.

Patrick V. Murphy, as Police Commissioner &c.,

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

s James M. Flavin
Clerk

Req. #41697

FILED
SEP 30 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-212

GEORGE HANZIMANOLIS

Petitioner,

—against—

PATRICK V. MURPHY, as Police Commissioner of the Police Department of the City of New York,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

ADRIAN P. BURKE,
Corporation Counsel
of the City of New York,
Attorney for Respondent,
Municipal Building,
New York, N. Y. 10007.
212-566-3322 or 4337

L. KEVIN SHERIDAN,
LEONARD KOERNER,
of Counsel.

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-212

GEORGE HANZIMANOLIS,

Petitioner,

—against—

PATRICK V. MURPHY, as Police Commissioner of the Police Department of the City of New York,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Questions Presented

1. Is there any merit to the claim that petitioner was found guilty of "suspicion of homicide" and that he is being punished for such "suspicion"?

2. Is there any evidence that the hearing accorded petitioner violated petitioner's constitutional rights under due process and equal protection of the laws?

3. Was the punishment of dismissal so excessive as to constitute cruel and inhuman punishment?

Statement of the Case

(1)

Since the petition did not set forth the evidence in the departmental hearing, we are submitting a summary of the evidence.

A departmental hearing on the charges (set forth in Appendix I attached to Petition for Certiorari) was held on June 21 and July 11, 1972, before the Deputy Commissioner of Trials for the Police Department of the City of New York.

Department's Evidence:

Lt. Robert Flynn of the New York State Police, testified that he is a member of the Bureau of Criminal Investigation (64).* On September 25, 1970, in connection with a homicide he was investigating, he questioned the petitioner as to the latter's activities on September 21, 1970 (66). The petitioner replied that on that date he had come off duty (or went to sleep) at about 2:45 a.m., and later awoke at about 7:20 a.m. (66). About 8 a.m., petitioner said, he received a call from Nina Shapiro and arranged to meet her at a motel near Tarrytown, N.Y. (66). He met Mrs. Shapiro at the Saw Mill River Lodge at about 10:15 a.m. (66).

The petitioner said that he stayed with Mrs. Shapiro until some time between 2 and 3 p.m. He then left her and returned to New York City, stopping off to attempt to make collections in connection with his newspaper business (67). None of the people the petitioner went to see were at home (67).

The petitioner said that he drove around for a while, then went to a movie, and finally returned home between 1 and 2 a.m. (67).

The petitioner stated that he and Mrs. Shapiro registered at the motel under the name of Mr. and Mrs. L.

* Unless otherwise indicated, numbers in parentheses refer to in the "Papers in Review" submitted by the appellant to the New York Appellate Division and the New York Court of Appeals. Numbers preceded by the letter A refer to pages in the Appendix attached to the Petition for Certiorari.

Lewis, giving as their address 220 Broadway, New York City (67-68). The State Police verified the fact that a Mr. and Mrs. L. Lewis had stayed at the motel (68). While the petitioner had said that he and Mrs. Shapiro stayed at the Saw Mill Lodge, they had in fact stayed at the Parkway Motel which is next to the Saw Mill Lodge (68, 78).

The State Police had looked for the petitioner at his home, and at his father's home, and finally located him at the 26th Precinct (71). Petitioner was brought to Hawthorne State Police Headquarters (71). Petitioner was not under arrest and went voluntarily (71). He arrived at Hawthorne between 9 and 10 p.m. (71). The petitioner was released from Hawthorne about 1:30 or 2 a.m. (72). Petitioner was not represented by an attorney during the questioning, but he was advised of his right to counsel and that the State would provide an attorney if requested (72, 73). The State Police told petitioner that he was being questioned about a homicide (73).

When petitioner was taken to Hawthorne, Lt. Gore and Sergeant Manners of the City's Police Department accompanied him (74).

During the questioning, a polygraph test was given petitioner (75). The results were inconclusive (75).

The State Police had been informed by Mrs. Shapiro that she and the petitioner had stayed at a motel on September 21st (79-80).

Investigator Frank Conover of the State Police, Bureau of Criminal Investigation, testified that he questioned the petitioner on the evening of September 25, 1970, about petitioner's movements on September 21, 1970 (84-85). The petitioner gave to Conover the same account of his movements as he gave Lt. Flynn (85). Mr. Conover was in the room (with Lt. Flynn) during the questioning (87,

92). Lt. Flynn and Mr. Conover were not present when the polygraph test was given (95).

The petitioner said that he had known Mrs. Shapiro for a couple of years and had gone to a motel with her on many occasions (98).

Sergeant Charles Palmer of the Internal Affairs Division of the City's Police Department, started an investigation of the petitioner on December 30, 1970 (102). The interrogations disclosed that petitioner was engaged in a newspaper delivery business (102-103). The interrogations were taped (105).

The petitioner said he had driven a taxicab (109). He delivered newspapers to a group of newsboys, who, in turn, delivered them to customers (109). He had authorization from the Department to drive the cab but not to deliver newspapers (110).

The petitioner resided at 109 Wardsworth Avenue, Manhattan (105). He was asked where he registered his automobile; he replied that it was registered from an address in Keansberg, New Jersey (111). A certified abstract of the registration from the State of New Jersey was placed in evidence (111-112).

At the interrogation of June 8, 1971, the petitioner was asked about his whereabouts on September 21, 1970 (113). He was asked if he had been in a motel with Mrs. Shapiro on that date (114). His answer was "No" (114). He was asked if he had ever spent any time in motels with Mrs. Shapiro prior to September 21, 1970 (115). His answer was "No" (115).

He was asked as to the license plate number of his car (116). He gave it as "SRX 741, New Jersey" (116).

Sergeant Palmer obtained from the Westchester Sheriff's office a series of motel registrations (116-118). They were from the Parkway Motel, Elmsford, New York (118). They were in the name of Mr. and Mrs. L. Lewis and showed a license plate number "which directly reflects the license plate number of Patrolman George Hanzimanolis, both the New York license plate number and the New Jersey license plate number" (121).

On the registration cards, the name "Lewis" is printed (125). On some of the cards, the abbreviation for Broadway, appears to be written (125). The words "Mr. and Mrs." are written (125).

Of the 34 cards, two do not show an automobile license plate number (126, 189, 191).

The registration cards were admitted as Exhibit 2, subject to a showing that the cards were written by the petitioner (129).

Transcripts of the tapes of the questionings of June 8, and 17, 1971, were admitted into evidence (135, 139).

Lt. James Horan of the Police Department Crime Laboratory testified that he was given certain motel registrations, petitioner's memo book and some accident reports signed by the petitioner and asked to compare the handwritings (141). The registrations are the ones in the name of "Mr. and Mrs. L. Lewis" (142).

Lt. Horan found that the writing on the motel registration cards had been written by the same hand as had written the memo book and the accident reports (143, 151).

Originally, Lt. Horan received photo-copies of the registration cards; he requested the originals (159). His first report based on the photo-copies was satisfactory but, when

he learned he was to testify, he asked for the originals (159-160).

Two of the registration cards had been found by Lt. Horan not to be in petitioner's handwriting (165-166), but they had been introduced in evidence along with the others. Subsequently these two cards were excluded from the evidence (165-166). These cards did not bear the names "Mr. and Mrs. L. Lewis"; one was signed "Mr. & Mrs. M. Lewis" and the other "Warren Lewis" (189, 191).

Lt. Horan did not know who wrote the license plate numbers shown on the motel registration cards (167).

Lt. Horan's report was placed in evidence as Exhibit 7 (172).

The Department rested (175). The petitioner offered no evidence (175). The petitioner moved to dismiss (175). In his argument, counsel for petitioner stated that petitioner had been legally separated from his wife as of March 20, 1968 (175). He conceded the petitioner had no permission to operate a newspaper route, but he pointed out that the petitioner was self-employed, not an employee of the newspaper (177).

(2)

By memorandum dated November 8, 1972, the Trial Commissioner, after reciting the charges, stated (29-31, A8a-9a):

> "A trial was completed before me on July 11, 1972.
>
> On September 21, 1970, Dr. Sidney Shapiro was found dead in his automobile in Westchester County apparently the victim of a homicide by gunshot. Anonymous telephone calls to law enforcement agen-

cies alleged that a New York City patrolman was friendly with a doctor's wife and that the patrolman had hired someone to kill Dr. Shapiro. The respondent was identified as the above patrolman. He is legally separated from his wife.

On September 24, 1970 the respondent in the presence of investigators of this department told representatives of the New York State Police that he had been having an affair with Mrs. Nina Shapiro at the time of the death of her husband. He further stated that on the date of the homicide he had gone to a motel with Mrs. Shapiro and registered under the name of Mr. and Mrs. L. Lewis at Parkway Motel. They had gone to motels on other occasions.

On June 8th and June 17th, 1971 the respondent was questioned by representatives of the Internal Affairs Division of this department. He then said that the statement he made to the New York State police was false. He was specifically asked if he had registered on 27 different dates between January 19, 1970 and September 29, 1970 mostly at the Parkway Motel in Elmsford, New York using the name Mr. and Mrs. L. Lewis. The respondent's reply was 'I don't recall.'

The department produced a handwriting expert who examined the motel registration cards and department records which contained respondent's signature and handwriting. It was his opinion that the respondent made them. Respondent did not offer any proof to show that the cards were not in his handwriting.

The respondent conceded that he had made a statement to the New York State Police that he had

been at a motel with Mrs. Shapiro on September 21, 1971 the day of the homicide but contends that statement was made under pressure.

The respondent was separated from his wife for three years prior to the date of these specifications which are dated August 16, 1971.

During the course of this investigation, it was also disclosed that the respondent had a newspaper delivery service and had not obtained permission from the Police Commissioner to engage in this employment. It was also disclosed that he had registered a motor vehicle in the State of New Jersey when actually he was not a resident of that state.

Findings

I find that the statements of the respondent that he could not recall whether he had registered at a motel with Mrs. Shapiro on 27 occasions were evasive and false.

I find that his original statement to the State Police that he had cohabited with Mrs. Shapiro on September 21, 1970 was true.

The respondent was married at the time that he had relations with a married woman on numerous occasions.

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death.

I find the respondent NOT GUILTY of Specification No. 3, and GUILTY of Specifications Nos. 1, 2, 4 and 5.

The respondent has 7 years of service in the department without any prior record.

Recommendation

I recommend that the respondent be DISMISSED from the Police Service of the City of New York."

ARGUMENT

Petitioner's claim that he was found guilty of "suspicion of homicide" is without foundation.

There is nothing in the evidence to indicate that the hearing accorded petitioner violated petitioner's constitutional rights under due process and equal protection of the laws.

(1)

In the petition, petitioner claims that he was found guilty of involvement in the death of Dr. Shapiro. The argument is that the Hearing Officer made a specific finding of this (Pet., p. 7). This argument lacks merit.

In his memorandum to the Police Commissioner, the Hearing Officer simply reported what is a fact: "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro *but apparently there is no proof that he was responsible for the death*". (A10a, emphasis added).

This is not a "finding" of any sort. It is merely an item of information which the Hearing Officer felt he should pass on to the Police Commissioner. The latter might well want to know if suspicion still existed with respect to petitioner's involvement in the homicide or whether the petitioner had been exculpated. It in no way affects the specific findings that the petitioner was guilty of charges 1, 2, 4 and 5, none of which relate to the homicide.

The testimony before the Hearing Officer contains practically no evidence respecting the homicide. The only time the fact the petitioner was a suspect in the homicide is mentioned is in Mr. Conover's answer to a question by petitioner's own attorney (91):

> "Q. Was he a target in a homicide. A. Possibly a suspect."

The charges being tried did not include any relating to a homicide. Some indication that the question of the petitioner's involvement in the homicide was not being tried before the Hearing Officer is the fact that petitioner, represented by counsel, never found it necessary to invoke his privilege against self-incrimination.

It is noteworthy that the New York Appellate Division and the New York Court of Appeals unanimously rejected petitioner's argument that he was found guilty of "suspicion". The allegation that petitioner was found guilty of suspicion does not involve a question of due process. The State Courts gave an interpretation of the evidence and an interpretation of the Hearing Officer's memorandum, which was reasonable and should not be disturbed.

(2)

Petitioner also claims that the hearing was held in an "atmosphere of confusion and suspicion" resulting in petitioner being denied a hearing as required by the Due Process and Equal Protection Clauses (Petition, p. 8). The petitioner does not call to the Court's attention any specific instances in the proceedings to support his contention. A reading of the minutes gives no indication of any basis for this assertion.

(3)

Petitioners also argues that the punishment of dismissal constituted cruel and inhuman treatment (Pet., p. 8). The cruel and inhuman punishment clause appears to apply only to punishment in criminal cases after conviction and sentence. See *Trope* v. *Dulles*, 356 U.S. 86, 99-102 (1958); *Weems* v. *United States*, 217 U.S. 349, 368 (1910); *Johnson* v. *Glick*, 481 F. 2d 1028, 1031 (2d Cir., 1973), cert. den. sub nom. *Employee-Officer John* v. *Johnson*, 414 U.S. 1033 (1973).

The charges against petitioner included "moonlighting", registering a car in New Jersey, co-habiting with Mrs. Shapiro and giving evasive and untrue answers in an official proceeding. Under New York law, the charge of giving evasive and untrue answers, by itself, justified the dismissal. See *Matter of Donnelly* v. *Police Department*, 40 AD 2d 649, 336 N.Y.S. 2d 508 (1st Dept., 1972).

CONCLUSION

The petition for writ of certiorari should be denied.

September 27, 1974.

Respectfully submitted,

ADRIAN P. BURKE,
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